

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2022090862

DECISION

Thomas Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on February 9, 2023.

Tami Summerville, Fair Hearings Manager, represented the South Central Los Angeles Regional Center (SCLARC or Service Agency). Armida Ochoa, Ochoa's Consulting LLC, represented Claimant. Family titles are used to protect confidentiality and privacy. Spanish language interpreters assisted in the proceedings.

This matter is governed by the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code sections 4500 through 4885 (Lanterman Act).

Documents and testimony were received in evidence. The record was held open until February 16, 2023, for Claimant's submission of translations, and until February 23, 2023, for response by the Service Agency. Claimant timely submitted translations of Exhibits I-1, I-2, and I-3, which were incorporated with their Spanish language versions and admitted into evidence.

The record closed and the matter was submitted for decision on February 23, 2023.

ISSUE

Whether hours for services, Respite and Personal Assistance, should be increased in light of parents' current circumstances.

FINDINGS OF FACT

1. In September 2022 the Service Agency denied requests to fund additional services. Claimant timely appealed.
2. More specifically, on September 6, 2022, the Service Agency: denied Claimant's request for an increase of Personal Assistance services to 152 hours and instead offered 75 hours per month, a decrease from the 125 hours per month previously provided; and denied Claimant's request for an increase of In-Home Respite Care Services to 91 hours and instead would continue to offer 46 hours per month. In the Notice of Proposed Action, the Service Agency stated that in evaluating a consumer's needs:

SCLARC must adhere to our purchase of service policy. Furthermore, [Claimant's] care requirements must be considered in relation to what would be expected for any individual his age. SCLARC is required to consider the family's responsibility for providing similar services to an individual without disabilities (WIC [Welfare and Institutions Code] §4646.4). In addition, Regional Centers must provide or secure family support services that recognize and build upon family strengths, natural supports and existing community resources (WIC §4685).

In denying the requests, the Service Agency concluded that Claimant had not demonstrated a reason for more services. Instead, sufficient generic resources were available, parents are typically responsible for providing the extra services requested, and the requests for more services were not in keeping with the Service Agency's policy regarding the Purchase of Services.

Claimant's Disability

3. On October 14, 2015, the Service Agency found Claimant eligible for services under the Lanterman Act based on a diagnosis of Autism Spectrum Disorder (ASD). Claimant, nine years old, lives with his Mother, Father, and two brothers. The three brothers are all clients of the Service Agency.

4. Claimant and his parents face many challenges. Claimant has no sense of danger. He wears diapers day and night. His speech is difficult to understand. He does not initiate communication with others. He attends a school of the Los Angeles Unified School District (LAUSD), but virtually only, not physically. In a Triennial Psycho-

Educational Assessment dated March 25, 2022, Claimant's cognitive ability was described as in the Low Average range.

5. SCLARC has assigned Claimant Service Coordinator (SC) Mayra Munguia. The Service Agency has employed SC Munguia for over five years. Currently a Team Leader, among her duties is case management, including assisting consumers and their family members to identify needs and access services and resources.

Claimant's IPP

6. SC Munguia participated in preparing Claimant's triennial Individual Program Plan (IPP), Exhibit 4. Reviewed on July 13, 2022, the IPP states on page A36 regarding Personal Assistance and community integration:

[Claimant] is currently receiving 125 hours per month of Personal Assistance services to help with his community integration. This service will end on August 31, 2022. [SC Munguia] requested family provide an updated calendar in order to request an extension of the service. Mother also inquired about socialization skills. [SC Munguia] provided mother with a summary of service and requested an updated IEP [Individualized Education Plan] to provide to Education Specialist for review of the service.

On page A38, the IPP states further regarding Personal Assistance:

Parents reported [Claimant] enjoys going to the beach, zoo, water park, library, the mall, and the theater. Mother reported [Claimant's] Personal Assistance provider assists

with all these activities. Mother also reported [Claimant] PA service has helped with him learning more about his community, crosswalk signs, stop signs, and bicycle signs.

7. SC Munguia testified she understands that Claimant needs a great deal of assistance with everyday life, including showering, toileting, and curbing inappropriate behaviors. Claimant must have constant supervision to prevent elopement and for his overall safety, especially during waking hours.

8. The family receive 46 hours per month of Respite services provided by Volunteers of America and 125 hours per month of Personal Assistance through Premier Healthcare. The Personal Assistance hours were set to expire on August 31, 2022 but were extended while the hearing and a decision were pending. As Mother testified, more hours of Respite and at least as many Personal Assistance hours as were previously funded are necessary for relief from the hard work of caring for Claimant and his two brothers all through the day every day, week after week.

9. Claimant receives other assistance: 215 hours per month of In-Home Supportive Services (IHSS), funded by the Department of Public Social Services with Father as the provider. Claimant also receives a Social Security benefit of \$921 per month. Claimant is under the care of a psychiatrist and receives Occupational Therapy, both services provided by Kedron Community Health Center, Los Angeles. Claimant's school district provides Claimant speech therapy.

Mother's Testimony

10. Mother believes relief from the many tasks parents perform will allow her and Father to continue to alleviate Claimant's disability and promote his progress toward living a life like his peers.

11. Regarding her health, Mother produced her discharge instructions dated December 5, 2022, from MLK Community Healthcare, Los Angeles. Mother, 31 years old, was diagnosed then with: 1) weakness; 2) acute nonspecific chest pain with low risk of coronary artery disease; and 3) upper respiratory infection with cough and congestion.

12. Mother works to meet Claimant's needs by serving as both a caregiver herself and as a manager or supervisor of other caregivers, such as Claimant's speech therapist. Mother is also called upon frequently to act as advocate before several institutions, such as insurance carriers, LAUSD, the Service Agency, and the Department of Developmental Services (DDS).

13. By agreeing to fund Respite, the Service Agency has acknowledged that, as stated in its POS Funding Standards, Exhibit 6, page A57, Claimant's "care needs . . . exceed those of a person of the same age without a developmental disability." The relief Respite services provided are not intended to be comprehensive. The POS Funding Standards thus state that respite is not meant to meet a family's total need for relief from care or from parenting. It is not meant to provide attendant care personal to the consumer, except as a need arises during the respite period.

14. On October 27, 2022, for instance, Mother sent DDS an email to complain that the Service Agency created obstacles that prevented the family from receiving vital services. Mother believes that one such obstacle was a delay by the Service Agency in demanding that Mother provide a calendar with her request for more service hours. Mother explained that she was unaware at first that she should prepare a calendar showing the schedule of when service hours were needed and would be spent. Mother provided such a calendar, Exhibit D-1, to SC Munguia for August 31, 2022.

15. Regarding Personal Assistance, the calendar shows that Claimant and Parents propose to use five hours of assistance each day of the week: that is, 35 hours per week, for a total of 150 hours for each month of 30 days and an average of 152 hours per month over the course of the year. On Saturdays and Sundays, the Personal Assistance hours would be used between 11:00 a.m. and 4:00 p.m., for various types of outdoor recreation, such as visits to a lake, and other public places like shopping malls and movie theaters. On weekdays, Personal Assistance hours would be used between 3:00 p.m. and 8:00 p.m., sometimes for recreation, such as trips to the zoo, sometimes to the market or generally into the community.

16. Regarding Respite, the calendar shows that Claimant and Parents propose to use three hours per day each day of the week from 6:00 a.m. to 9:00 a.m.

17. IHSS would be used on weekdays from 8:00 p.m. to midnight and every day of the week for the hour, from midnight to 1:00 a.m., and at a few other times during the week. The only hours not covered by IHSS, Personal Assistance, or Respite would be the three hours each day from 1:00 a.m. to 4:00 a.m., Sundays from 4:00 a.m. to 6:00 a.m. and 9:00 a.m. to 11:00 a.m., and Saturdays and Sundays from 4:00 p.m. to midnight.

LEGAL CONCLUSIONS

Principles of Law

1. The party that asserts a claim or seeks to change the status quo generally has the burden of proof in administrative proceedings. (Cal. Administrative Hearing Practice (Cont. Ed. Bar 2d ed. 1997) § 7.50, p. 365.) Claimant bears the burden of proof in these proceedings. Under Evidence Code sections 115 and 500, the evidentiary

standard Claimant must meet is proof by a preponderance of the evidence, meaning Claimant must show that the evidence makes it more likely than not that he should prevail.

2. Welfare and Institutions Code section 4501 recognizes the state's responsibility to assist persons with developmental disabilities and the complexities involved in coordinating the provision of services and supports among many government agencies. The Lanterman Act is meant to empower clients of a Service Agency by enabling them "to approximate the pattern of everyday living available to people without disabilities of the same age," to integrate them into the community, and allow them to build circles of support.

3. The Lanterman Act guides decisions on appropriate services, especially in reference to the IPP. Thus Welfare and Institutions Code section 4512, subdivision (b), provides in part:

The determination of which services and supports are necessary for each consumer shall be made through the [IPP] process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by [IPP] participants, the effectiveness of each option in meeting the goals stated in the [IPP], and the cost-effectiveness of each option.

4. The Lanterman Act stresses that individual preferences must be respected, balanced by cost considerations. Thus, Welfare and Institutions Code section 4646, subdivision (a), provides:

It is the intent of the Legislature to ensure that the [IPP] and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, if appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the [IPP], reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

5. Under Welfare and Institutions Code section 4646.4, the Service Agency is required to consider its purchase of service policies, as well as a family's responsibility for providing services similar to those provided to a person without disabilities. As set out under subdivision (a) of section 4646.4:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the

establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and if purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports if appropriate. . . .

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

(5) Commencing October 1, 2022, consideration of information obtained from the consumer and, if appropriate, the parents, legal guardian, conservator, or authorized representative about the consumer's need for

the services, barriers to service access, and other information.

6. The pertinent part of Welfare and Institutions Code section 4659, referenced above in section 4646.4, subdivision (a)(3), states:

(a) Except as otherwise provided in subdivision (b) or (e), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

7. Welfare and Institutions Code section 4648, subdivision (a)(8), provides: "Regional center funds shall not be used to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services."

Analysis

8. Parents are generally faced with a great deal of work in caring for a young child, whether the child is healthy or not, whether the child is developmentally delayed or not. Claimant's parents, however, are burdened with childcare duties beyond what is usual because of Claimant's ASD, maladapted behaviors, and his developmental delays. Their burden is increased in that both Claimant's brothers are subject to developmental delays.

9. As a result, the Service Agency has funded substantial assistance for Parents' relief in the form of Respite and Personal Assistance hours. Yet more assistance, not funded by the Service Agency, is available to Parents in the form of IHSS, and Claimant has other assistance directed to his personal needs from LAUSD, such as speech therapy, and from his health insurer, such as occupational therapy. All of this assistance has not eliminated the burdens Parents continue to bear in caring for Claimant. But eliminating all such burdens is practically impossible as a conscientious parent's concern for a child is, as a practical matter, limitless.

10. A governmental agency or a government-supervised non-profit organization like a Service Agency is not required, even if it were possible, to eliminate all burdens on the parents of a child with a developmental disability. The Service Agency's duty is to ease the burdens that, under the law, are considered to interfere too much with normal activities, such as the chance to rest or be free from constant work. What may be too much, however, the law does not state with precision.

11. Parents can hardly avoid favoritism in the determination of how much easing is appropriate. The Service Agency is left with a most difficult decision, balancing needs expressed by the family of the client against considerations of limited

state resources and constraints mandated by policy, such as the policy related to the Purchase of Services. As set out in the SCLARC POS Funding Standards, Exhibit 6, page A58, "respite services may provide support and assistance . . ." but "are not intended to meet a family's total need for relief from on-going care or parenting"

12. Mother demonstrated her sincere belief that more help for parents, more Respite and Personal Assistance hours, will promote the Lanterman Act section 4501 goal to allow Claimant to live like his peers who are not disabled. But the real benefits of these services are not all directly beneficial to Claimant. Thus under Welfare and Institutions Code section 4690.2, subdivision (a), Respite is intended, among other things, to "(1) Assist family members . . . ," and "(3) Relieve family members"

13. For instance, speech therapy, to help Claimant speak better, directly benefits him. Providing parents more relief from direct care of Claimant with more Respite hours is an indirect benefit, benefitting parents so that they in turn are better able to help Claimant, such as by Mother's supervision of speech therapy.

14. Claimant's evidence did not demonstrate that if parents do not benefit from more Respite and Personal Assistance hours as requested, benefits to Claimant will be degraded or lost. To put it another way, meeting the goals stated in Claimant's IPP is the expectation under Lanterman Act, as stated in both Welfare and Institutions Code sections 4512, subdivision (b), and 4646, subdivision (a). Claimant's evidence did not demonstrate that, without more hours, that expectation will be significantly harder to meet.

15. The Service Agency has granted Claimant services and supports in compliance with its mandate in the Lanterman Act, section 4646, subdivision (a)(4), to consider a client's need for extraordinary care, services, supports, and supervision.

Claimant's evidence did not demonstrate that his need is more extraordinary than the Service Agency has recognized already.

16. There can be no doubt that a family is responsible for most of a child's needs. That indeed is the implication in section 4646, subdivision (a)(4) of the Lanterman Act. The Service Agency, especially through SC Munguia, has listened to the family's concerns for Claimant and so assessed his needs as part of the family. In the IPP, the Service Agency has listed at length the variety of services and supports that could benefit Claimant. Claimant's evidence did not demonstrate that in its consideration of family responsibility the Service Agency has overestimated or unfairly evaluated the family's responsibility for providing services and supports similar to those listed in the IPP.

17. The Service Agency's evidence demonstrated that, in compliance with section 4648, subdivision (a)(8), of the Lanterman Act, it has taken care not to supplant the budget of another agency with responsibility to provide services to the public, such as LAUSD. More generally the Service Agency has, as mandated under the Act's sections 4646.4, subdivision (a), and 4659, allowed for funding of services from any source available, such as outside funding for IHSS.

18. In summary, Claimant needs a great deal of care, including the services and supports available under the Lanterman Act and under other laws. Claimant did not show that he should have more, specifically 152 instead of 75 hours per month of Personal Assistance, and 91 instead of 46 hours per month of In-Home Respite Care Services.

19. However, Claimant has for several months had the benefit of 125 hours per month of Personal Assistance. It would be a difficult transition suddenly to have

that reduced instead to only 91 hours per month of Personal Assistance. To smooth the transition, the Personal Assistance hours allotted Claimant should be 100 hours for the 60 days after this Decision is final and 75 hours per month after that. The rate of In-Home Respite Care Services is properly set at 46 hours per month.

ORDER

Claimant's appeal is denied, except that for 60 days after this Decision is final Claimant shall receive 100 hours per month of Personal Assistance hours and after that he shall receive 75 hours per month of Personal Assistance hours. The rate of Claimant's In-Home Respite Care Services shall remain at 46 hours per month.

DATE:

THOMAS LUCERO

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.